

110TH CONGRESS
2D SESSION

S. 3691

To amend the Commodity Exchange Act to require reporting and record-keeping for positions involving credit-default swaps, to grant the Federal Reserve Board authority over investment-bank holding companies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 19, 2008

Ms. COLLINS introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Commodity Exchange Act to require reporting and recordkeeping for positions involving credit-default swaps, to grant the Federal Reserve Board authority over investment-bank holding companies, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Financial Regulation
5 Reform Act of 2008”.

1 **SEC. 2. REPORTING AND RECORDKEEPING FOR POSITIONS**
 2 **INVOLVING CREDIT-DEFAULT SWAPS.**

3 (a) IN GENERAL.—Section 2(h) of the Commodity
 4 Exchange Act (7 U.S.C. 2(h)) is amended by adding at
 5 the end the following:

6 “(8) REPORTING AND RECORDKEEPING FOR
 7 POSITIONS INVOLVING CREDIT-DEFAULT SWAPS.—

8 “(A) DEFINITIONS.—In this paragraph:

9 “(i) CREDIT-DEFAULT SWAP.—The
 10 term ‘credit-default swap’ means a bilat-
 11 eral derivative contract that transfers, in
 12 exchange for 1 or more lump-sum or other
 13 payments, from 1 party to another, the
 14 risk that an entity, regardless of whether
 15 owned by the buyer of the protection, may
 16 experience a loss of value from a credit
 17 event such as a default, credit downgrade,
 18 or other contractually agreed-upon adverse
 19 event.

20 “(ii) CREDIT-DEFAULT SWAP TRADING
 21 CLEARINGHOUSE.—The term ‘credit-de-
 22 fault swap trading clearinghouse’ means an
 23 approved centralized clearinghouse for
 24 credit-default swap trading that is des-
 25 ignated by the Securities and Exchange
 26 Commission, in consultation with the Com-

modity Futures Trading Commission and the Chairman of the Board of Governors of the Federal Reserve System.

“(iii) REPORTABLE CONTRACT.—The term ‘reportable contract’ means a contract, agreement, or transaction involving a credit-default swap, executed through a credit-default swap trading clearinghouse.

“(B) USE OF CREDIT-DEFAULT SWAP TRADING CLEARINGHOUSES.—Each credit-default swap trading clearinghouse—

“(i) shall be subject to regulation by the Commission;

“(ii) shall be capitalized by participants in the credit-default swap trading clearinghouse at a level that is sufficient to guarantee payment for trading in credit-default swaps; and

“(iii) may assess participants in the credit-default swap trading clearinghouse in an amount necessary to maintain a default fund for the credit-default swap trading clearinghouse.

“(C) RECORDKEEPING.—The Commission, by rule, shall require any person holding, main-

1 taining, or controlling any position in any re-
 2 portable contract under this paragraph—

3 “(i) to maintain such records as di-
 4 rected by the Commission for a period of
 5 5 years, or longer, if directed by the Com-
 6 mission; and

7 “(ii) to provide such records upon re-
 8 quest to the Commission, the Department
 9 of Justice, the Securities and Exchange
 10 Commission, or the Federal Reserve Sys-
 11 tem, as applicable.

12 “(D) REPORTING OF POSITIONS INVOLV-
 13 ING CREDIT-DEFAULT SWAPS.—The Commis-
 14 sion shall prescribe rules requiring such regular
 15 or continuous reporting of positions in report-
 16 able contracts in accordance with such require-
 17 ments regarding size limits for reportable posi-
 18 tions and the form, timing, and manner of fil-
 19 ing such reports under this paragraph, as the
 20 Commission shall determine.”.

21 (b) CONFORMING AMENDMENTS.—Section 4a(e) of
 22 the Commodity Exchange Act (7 U.S.C. 6a(e)) is amend-
 23 ed—

24 (1) in the first sentence—

1 (A) by inserting “, by any credit-default
 2 swap trading clearinghouse (as defined in sec-
 3 tion 2(h)(8)(A)),” after “registered by the Com-
 4 mission”; and

5 (B) by inserting “, credit-default swap
 6 trading clearinghouse,” after “derivatives trans-
 7 action execution facility”; and

8 (2) in the second sentence, by inserting “, by
 9 any credit-default swap trading clearinghouse (as de-
 10 fined in section 2(h)(8)(A)),” after “registered by
 11 the Commission”.

12 **SEC. 3. FEDERAL RESERVE BOARD AUTHORITY OVER IN-**
 13 **VESTMENT BANK HOLDING COMPANIES.**

14 (a) REGULATION BY THE BOARD OF GOVERNORS OF
 15 THE FEDERAL RESERVE SYSTEM.—

16 (1) RULEMAKING REQUIRED.—Not later than
 17 90 days after the date of enactment of this Act, the
 18 Board of Governors of the Federal Reserve System
 19 (in this section referred to as the “Board”) shall
 20 issue final rules to provide for the examination of
 21 the safety and soundness of, and the extent of sys-
 22 temic financial risk posed by, any investment bank
 23 holding company organized in or doing business in
 24 the United States.

1 (2) INFORMATION FROM INVESTMENT BANK
2 HOLDING COMPANIES.—The rules of the Board
3 under this section shall provide for reasonable re-
4 porting of information by each investment bank
5 holding company, to the extent necessary to carry
6 out the purposes of this section.

7 (b) RULE OF CONSTRUCTION.—Nothing in this sec-
8 tion shall be construed as negating or preempting the au-
9 thority of the Securities and Exchange Commission to ex-
10 ercise its authority over broker or dealer operations in ac-
11 cordance with applicable provisions of law.

12 (c) EXCHANGE OF INFORMATION ON SYSTEMIC
13 RISK.—The Securities and Exchange Commission, the
14 Commodity Futures Trading Commission, and other ap-
15 propriate Federal regulatory agencies shall provide to the
16 Board all relevant information, as directed by the Board,
17 on the activities of investment bank holding companies
18 with respect to the prevention of systemic risks posed by
19 such activities to the United States economy.

20 (d) ENFORCEMENT PROVISIONS.—Any violation of
21 this section or the rules of the Board under this section
22 shall be subject to the enforcement and penalty provisions
23 of the Bank Holding Company Act of 1956, in the same
24 manner and to the same extent as those provisions are

1 applicable to violations of that Act by a bank holding com-
 2 pany (as defined in that Act).

3 (e) AUTHORIZATION OF APPROPRIATIONS.—There
 4 are authorized to be appropriated to the Board such sums
 5 as may be necessary to carry out this section.

6 (f) DEFINITIONS.—For purposes of this section, the
 7 term “investment bank holding company” means—

8 (1) any person other than a natural person that
 9 owns or controls one or more brokers or dealers (as
 10 those terms are defined in section 3 of the Securities
 11 Exchange Act of 1934 (15 U.S.C. 78c)); and

12 (2) the associated persons thereof.

13 (g) CONFORMING AMENDMENTS.—The Securities
 14 Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amend-
 15 ed—

16 (1) in section 6(g)(4)(A)(iv) (15 U.S.C.
 17 78f(g)(4)(A)(iv)), by striking “and (k)” and insert-
 18 ing “and (i)”;

19 (2) in section 15(b) (15 U.S.C. 78(o)(b))—

20 (A) in paragraph (11)(B)(vi), by striking
 21 “(h), and (i)” and inserting “and (h)”;

22 (B) in paragraph (12)(B)(vi), by striking
 23 “(h), and (i)” and inserting “and (h)”;

1 (3) in section 15A(k)(4)(C) (15 U.S.C. 78o–
 2 3(k)(4)(C)), by striking “and (k)” and inserting
 3 “and (i)”; and

4 (4) in section 17 (15 U.S.C. 78q)—

5 (A) by striking subsections (i) and (j); and

6 (B) by redesignating subsection (k) as sub-
 7 section (i).

8 **SEC. 4. REGULATIONS ON CLEARINGHOUSE OPERATIONS**

9 **AND FRAUDULENT, DECEPTIVE, AND MA-**

10 **NIPULATIVE ACTS.**

11 (a) RULEMAKING REQUIRED.—Not later than 90
 12 days after the date of enactment of this Act, the Securities
 13 and Exchange Commission, in consultation with the Board
 14 of Governors of the Federal Reserve System and the Com-
 15 modity Futures Trading Commission, shall issue final
 16 rules—

17 (1) to designate clearinghouses for credit-de-
 18 fault swaps; and

19 (2) to prohibit fraudulent, deceptive, or ma-
 20 nipulative acts or practices in connection with credit-
 21 default swaps.

22 (b) CRITERIA.—Rules of the Commission under this
 23 section shall require that clearinghouses—

24 (1) are capitalized by participants to a level
 25 adequate to guarantee payments; and

(2) are authorized to assess members for a default fund.

(c) REQUIRED USE OF CLEARINGHOUSES.—Any person that engages in a credit-default swap transaction shall utilize a clearinghouse designated by the Commission for such purpose in accordance with the rules issued under subsection (a).

8 SEC. 5. ESTABLISHING AN INDEPENDENT, BIPARTISAN
9 COMMISSION.

(a) COMMISSION ESTABLISHMENT.—There is established a temporary commission to be known as the Commission on Financial Regulatory Reform (referred to in this section as the “Commission”). The Commission shall review the financial regulatory structure and propose a comprehensive framework for fundamental reform of financial regulation in the United States.

17 (b) FUNCTIONS OF THE COMMISSION.—

(1) IN GENERAL.—The Commission shall conduct a top-to-bottom review of the Nation’s existing financial regulatory structure and the contribution of the current structure to the stability or instability of financial markets, in order to develop a comprehensive framework for—

24 (A) reforming the laws governing our Na-
25 tion's financial markets;

1 (B) strengthening and reconstituting regu-
2 latory agencies; and

3 (C) improving transparency and oversight.

4 (2) ANALYSIS.—In the course of its activities,
5 the Commission shall analyze—

6 (A) the impact of the financial regulatory
7 structure on the health and stability of the
8 United States economy;

9 (B) the strength, sustainability, and com-
10 petitiveness of the Nation’s financial institu-
11 tions; and

12 (C) the financial well-being of American
13 taxpayers, investors, and businesses.

14 (3) CONSIDERATIONS.—The Commission shall
15 review and consider all aspects of financial regula-
16 tion, including the regulation of—

17 (A) bank holding companies, financial
18 holding companies, commercial banks, invest-
19 ment banks, thrifts, credit unions, and indus-
20 trial loan companies;

21 (B) payment and settlement systems;

22 (C) hedge funds, private equity funds, and
23 the markets for alternative investments;

24 (D) special purpose vehicles and off-bal-
25 ance sheet financing for financial companies;

1 (E) the securitization of mortgages and
2 other assets;

3 (F) exchange-based, electronic, and over-
4 the-counter markets for financial derivative
5 products;

6 (G) the mortgage finance industry, includ-
7 ing mortgage brokers and mortgage lending in-
8 stitutions;

9 (H) equity markets, including short-selling
10 practices, and commodity futures markets; and

11 (I) the insurance industry and its role in
12 the financial markets.

13 (c) POWERS OF THE COMMISSION.—

14 (1) IN GENERAL.—

15 (A) HEARINGS AND EVIDENCE.—The
16 Commission or, on the authority of the Com-
17 mission, any subcommittee or member thereof,
18 may, for the purpose of carrying out this Act—

19 (i) hold such hearings and sit and act
20 at such times and places, take such testi-
21 mony, receive such evidence, administer
22 such oaths; and

23 (ii) require the attendance and testi-
24 mony of such witnesses and the production
25 of such books, records, correspondence,

1 memoranda, papers, and documents, as the
2 Commission or such designated sub-
3 committee or designated member may de-
4 termine advisable.

5 (B) FIRST MEETING.—The first meeting of
6 the Commission shall occur not later than 30
7 days after the date of enactment of this Act.

8 (2) CONTRACTING.—The Commission may, to
9 such extent and in such amounts as are provided in
10 appropriation Acts, enter into contracts to enable
11 the Commission to discharge its duties under this
12 Act.

13 (3) INFORMATION FROM FEDERAL AGENCIES.—

14 (A) IN GENERAL.—The Commission is au-
15 thorized to secure directly from any executive
16 department, bureau, agency, board, commission,
17 office, independent establishment, or instrumen-
18 tality of the Government, information, sugges-
19 tions, estimates, and statistics for the purposes
20 of this Act. Each department, bureau, agency,
21 board, commission, office, independent estab-
22 lishment, or instrumentality shall, to the extent
23 authorized by law, furnish such information,
24 suggestions, estimates, and statistics directly to
25 the Commission, upon request made by the

1 chairman, the chairman of any subcommittee
2 created by a majority of the Commission, or
3 any member designated by a majority of the
4 Commission.

5 (B) RECEIPT, HANDLING, STORAGE, AND
6 DISSEMINATION.—Information shall only be re-
7 ceived, handled, stored, and disseminated by
8 members of the Commission and its staff con-
9 sistent with all applicable statutes, regulations,
10 and Executive orders.

11 (4) ASSISTANCE FROM FEDERAL AGENCIES.—

12 (A) GENERAL SERVICES ADMINISTRA-
13 TION.—The Administrator of General Services
14 shall provide to the Commission on a reimburs-
15 able basis administrative support and other
16 services for the performance of the Commis-
17 sion's functions.

18 (B) OTHER DEPARTMENTS AND AGEN-
19 CIES.—In addition to the assistance prescribed
20 in subparagraph (A), departments and agencies
21 of the United States may provide to the Com-
22 mission such services, funds, facilities, staff,
23 and other support services as they may deter-
24 mine advisable and as may be authorized by
25 law.

1 (5) GIFTS.—The Commission may accept, use,
2 and dispose of gifts or donations of services or prop-
3 erty.

4 (6) POSTAL SERVICES.—The Commission may
5 use the United States mails in the same manner and
6 under the same conditions as departments and agen-
7 cies of the United States.

8 (d) NON-APPLICABILITY OF FEDERAL ADVISORY
9 COMMITTEE ACT.—

10 (1) IN GENERAL.—The Federal Advisory Com-
11 mittee Act (5 U.S.C. App.) shall not apply to the
12 Commission.

13 (2) PUBLIC MEETINGS AND RELEASE OF PUB-
14 LIC VERSIONS OF REPORTS.—The Commission
15 shall—

16 (A) hold public hearings and meetings to
17 the extent appropriate; and

18 (B) release public versions of the reports
19 required under this Act.

20 (3) PUBLIC HEARINGS.—Any public hearings of
21 the Commission shall be conducted in a manner con-
22 sistent with the protection of information provided
23 to or developed for or by the Commission as re-
24 quired by any applicable statute, regulation, or Ex-
25 ecutive order.

1 (e) COMPOSITION.—

2 (1) IN GENERAL.—The Commission shall be
3 composed of 12 members, selected not later than 15
4 days after the date of enactment of this Act, of
5 whom—

6 (A) three persons shall be appointed by the
7 majority leader of the Senate, after consultation
8 with the Chairman of the Committee on Bank-
9 ing, Housing and Urban Affairs;

10 (B) three persons shall be appointed by the
11 minority leader of the Senate, after consultation
12 with the ranking minority members of the Com-
13 mittee on Banking, Housing and Urban Affairs;

14 (C) three persons shall be appointed by the
15 Speaker of the House of Representatives, after
16 consultation with the Chairman of the Com-
17 mittee on Financial Services; and

18 (D) three persons shall be appointed by
19 the minority leader of the House of Representa-
20 tives, after consultation with the ranking minor-
21 ity member of the Committee on Financial
22 Services.

23 (2) QUALIFICATIONS.—An individual appointed
24 may not be an officer or employee of the Federal
25 Government or any State or local government. It is

1 the sense of Congress that individuals appointed to
 2 the Commission should have national recognition as
 3 financial sector experts, and may include former
 4 government officials, private market participants,
 5 and representatives of the academic community,

6 (3) OFFICERS.—Officers of the Commission are
 7 to be chosen by the Commission’s membership.

8 (f) FINAL REPORT OF COMMISSION.—Not later than
 9 120 days after the date of the enactment of this Act, the
 10 Commission shall submit to the President and Congress
 11 a final report containing such findings, conclusions, and
 12 recommendations for corrective measures as have been
 13 agreed to by a majority of committee members.

14 (g) COMPENSATION OF COMMISSION STAFF.—

15 (1) IN GENERAL.—

16 (A) APPOINTMENT AND COMPENSATION.—

17 The chairman, in consultation with vice chair-
 18 man, in accordance with rules agreed upon by
 19 the Commission, may appoint and fix the com-
 20 pensation of a staff director and such other per-
 21 sonnel as may be necessary to enable the Com-
 22 mission to carry out its functions, without re-
 23 gard to the provisions of title 5, United States
 24 Code, governing appointments in the competi-
 25 tive service, and without regard to the provi-

sions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(B) PERSONNEL AS FEDERAL EMPLOYEES.—

(i) IN GENERAL.—The executive director and any personnel of the Commission who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(ii) MEMBERS OF COMMISSION.—Subparagraph (A) shall not be construed to apply to members of the Commission.

(2) DETAILEES.—Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

1 (3) CONSULTANT SERVICES.—The Commission
2 is authorized to procure the services of experts and
3 consultants in accordance with section 3109 of title
4 5, United States Code, but at rates not to exceed the
5 daily rate paid a person occupying a position at level
6 IV of the Executive Schedule under section 5315 of
7 title 5, United States Code.

8 (h) COMPENSATION AND TRAVEL EXPENSES.—

9 (1) COMPENSATION.—Each member of the
10 Commission may be compensated at not to exceed
11 the daily equivalent of the annual rate of basic pay
12 in effect for a position at level IV of the Executive
13 Schedule under section 5315 of title 5, United
14 States Code, for each day during which that member
15 is engaged in the actual performance of the duties
16 of the Commission.

17 (2) TRAVEL EXPENSES.—While away from
18 their homes or regular places of business in the per-
19 formance of services for the Commission, members
20 of the Commission shall be allowed travel expenses,
21 including per diem in lieu of subsistence, in the
22 same manner as persons employed intermittently in
23 the Government service are allowed expenses under
24 section 5703(b) of title 5, United States Code.

25 (i) REPORTS OF COMMISSION; TERMINATION.—

1 (1) INTERIM REPORTS.—The Commission may
2 submit to the President and Congress interim re-
3 ports containing such findings, conclusions, and rec-
4 ommendations for corrective measures as have been
5 agreed to by a majority of Commission members.

6 (2) FINAL REPORT.—Not later than 6 months
7 after the date of the enactment of this Act, the
8 Commission shall submit to the President and Con-
9 gress a final report containing such findings, conclu-
10 sions, and recommendations for corrective measures
11 as have been agreed to by a majority of Commission
12 members.

13 (3) TERMINATION.—

14 (A) IN GENERAL.—The Commission, and
15 all the authorities of this Act, shall terminate
16 60 days after the date on which the final report
17 is submitted under paragraph (2).

18 (B) ADMINISTRATIVE ACTIVITIES BEFORE
19 TERMINATION.—The Commission may use the
20 60-day period referred to in subparagraph (A)
21 for the purpose of concluding its activities, in-
22 cluding providing testimony to committees of
23 Congress concerning its reports and dissemi-
24 nating the final report.

25 (j) FUNDING.—

1 (1) TRANSFER FROM THE DEPARTMENT OF
2 THE TREASURY TARP PROGRAM.—Of the amounts
3 authorized to be appropriated by this Act and made
4 available in Public Law for the Troubled Asset Re-
5 lief Program established under the Emergency Eco-
6 nomic Stabilization Act of 2008, not to exceed
7 \$5,000,000 shall be available for transfer to the
8 Commission for purposes of the activities of the
9 Commission under this Act, and including assistance
10 for participating Federal agencies.

11 (2) DURATION OF AVAILABILITY.—Amounts
12 made available to the Commission under paragraph
13 (1) shall remain available until the termination of
14 the Commission.

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